

MIAMI BEACH

City of Miami Beach, 1700 Convention Center Drive, Miami Beach, Florida 33139, www.miamibeachfl.gov

COMMISSION MEMORANDUM

TO: Mayor Dan Gelber and Members of the City Commission

FROM: Alina T. Hudak, City Manager 

DATE: February 9, 2022

SUBJECT: **Ordinance: Alcoholic Beverages - Modifications and Exceptions to Hours of Sale for On Premise Consumption**

ADMINISTRATION RECOMMENDATION

The Administration recommends that the City Commission discuss the proposed Ordinance and reach consensus on applicable geographic boundaries, prior to approving any version of the legislation.

BACKGROUND

On November 2, 2021, pursuant to Resolution No. 2021-31824, the following ballot question was submitted to the City's voters:

Non-Binding, Straw Ballot Question: Citywide - Changing Alcoholic Beverage Establishments Sales/Consumption Termination Time

City law allows, subject to exceptions, the sale and consumption of alcoholic beverages at Alcoholic Beverage Establishments throughout the City, from 8:00 a.m. until 5:00 a.m. the following day.

Would you support changing this 5:00 a.m. termination time to 2:00 a.m. throughout the City, with specific locations and related restrictions and exceptions, to be determined by City Commission by Ordinance?

The ballot question was approved by 56.52% (7,302) of the City's voters.

CURRENT LEGAL CHALLENGE AND IMPACT ON FUTURE LEGISLATION

On May 12, 2021, the City Commission adopted Ordinance No. 2021-4413, which modified the hours for the sale and on-premises consumption of alcoholic beverages in the MXE district south of 16th Street. Specifically, the Ordinance changed the termination time for the sale and on-premises consumption from 5:00 a.m. to 2:00 a.m. each night. **The provisions of Ordinance No. 2021-4413 automatically sunsetted on December 8, 2021.**

On May 17, 2021, Clevelander Ocean, LP (the "Clevelander") filed a complaint in Circuit Court which, among other things, challenged the alcohol rollback set forth in the Ordinance. On June 21, 2021, the Circuit Court granted, in part, Clevelander's Motion for

Temporary Injunction, and enjoined the City from enforcing the Ordinance. The City promptly appealed, and the case remains pending before the 3rd District Court of Appeal (Third DCA). At issue on appeal is whether alcohol hours of sale for a specified area of the City may be regulated within Chapter 6 of the City Code or must instead be adopted within Chapter 142 (i.e. as an amendment to the Land Development Regulations).

On December 6, 2021, the Cleavelander filed a suggestion of mootness on the basis that the Ordinance was scheduled to expire on its own terms on December 8, 2021. While we cannot predict how the Third DCA will rule, now that the Ordinance has expired, the court may decline to rule on the merits, in light of the suggestion of mootness. .

Amendments to Chapter 6 of the City Code require four (4) affirmative votes, while amendments to the Land Development Regulations (LDRs) require five (5) affirmative votes. However, in order to consolidate all of the regulations pertaining to hours, some modifications to the LDRs will likely be required (on a 5/7ths vote).

In view of the pendency of the appellate court's ruling, the Administration and the City Attorney's Office continue to recommend that the City Commission postpone the final adoption of any Ordinance pertaining to alcohol hours of sale until the Third DCA either (i) rules on the City's appeal, or (ii) determines that the issue is moot. Any ruling on the merits is likely to impact the manner in which future alcohol legislation is adopted.

LEGISLATIVE HISTORY

On January 12, 2022, a special City Commission was held to discuss hours for the sale of alcoholic beverages for consumption on premises. The Administration developed and presented draft options to the City Commission on January 12, 2022, which were predicated upon a full rollback to 2:00 a.m. for all establishments Citywide (see attached January 12, 2022 City Commission Memo).

After a lengthy discussion at the January 12, 2022 meeting, the City Commission requested that the Administration and the City Attorney draft a First Reading Ordinance, in accordance with the following general direction:

- Locate all regulations pertaining to hours for onsite consumption within Chapter 6 of the City Code.
- Further study the geographic boundaries proposed under option 4 and provide additional geographic boundaries for consideration by the City Commission.
- Further study incorporating elements of option 3 into the revised geographic boundaries.
- Include a defined application process, as well as minimum operational criteria and performance standards, for all areas where extend hours of alcohol sales would occur.

ANALYSIS

After the January 12, 2022, meeting, Mayor Gelber agreed to sponsor the revised legislation drafted in response to the direction of the City Commission. The proposed draft Ordinance consists of City-wide legislation relating to hours of sale for alcoholic beverages

and is consolidated within Chapter 6 of the City Code. This allows for better consistency in the application of hours of operation for all types of alcoholic beverage establishments. Additionally, the City's legal position is that there are no "vested rights" with regard to an operator's entitlement to hours of sale for alcoholic beverages.

The attached draft Ordinance creates a uniform, city-wide prohibition on the sale of alcoholic beverages for consumption on premises from 2:00 a.m. to 8:00 a.m., 7 days a week. Additionally, the proposed draft legislation creates a process for extended hours of sale of alcohol (not past 5:00 a.m.) and contains two primary components:

1. The establishment of specific geographic areas of the city for which extended hours for the sale of alcohol may occur.
2. The creation of performance standards and operational criteria for all establishments seeking extended hours of alcohol sales for on premise consumption.

Geographic Areas

Pursuant to the direction of the City Commission, the Administration identified additional geographic areas for consideration. The following are the potential geographic areas identified in the draft Ordinance for extended hours of alcohol sales for on premise consumption:

1. Oceanfront hotels with more than 200 rooms.
2. East Collins. Those properties located east of Collins Avenue, south of 46th Street and north of 15th Street.
3. Lower Washington Avenue. Those properties fronting Washington Avenue, between 5th Street and Lincoln Road.
4. Collins Park. Those properties located within the area bounded by 19th Street on the south, Liberty Avenue on the west, Collins Avenue on the east and 21st Street on the north.
5. Normandy Drive. Those properties fronting the south side of Normandy Drive or the north side of 71st Street, between Rue Notre Dame on the west and Rue Vendome on the east.
6. Art Deco Cultural District. Those properties bounded by 5th Street on the south, Collins Court on the west, Ocean Drive on the east and 16th Street on the north.
7. Lower Alton Road. Those properties, fronting Alton Road from 8th Street to Collins Canal.
8. Lincoln Road. Those properties fronting Lincoln Road from Washington Avenue to Collins Avenue.

The Administration recommends that the City Commission discuss these proposed geographic areas, as well as any additional defined geographic areas, to reach consensus.

Performance Standards and Operational Criteria

The following is a general summary of the application and performance criteria, as well as enforcement and minimum distance separation requirements, all of which would be applicable to any establishment deemed eligible to request extended hours for the sale of alcoholic beverages for consumption on premises. The draft Ordinance contains more specific details.

1. For extended hours, alcoholic beverages may only be served or consumed on premises after 2:00 a.m. within fully enclosed (air-conditioned) areas of a building. No alcoholic beverages may be sold or consumed after 2:00 a.m. within any open or outdoor areas of a building including, without limitation, patios, terraces, rooftops, courtyards, or any areas of a building or property with open windows, doors, or storefronts.
2. A minimum distance separation requirement of 500 feet between establishments with an extended hours approval is proposed. This minimum distance separation would not apply to those establishments licensed to sell alcohol beverages after 2:00 a.m. that were issued a business tax receipt (BTR) prior to April 1, 2022.
3. If entertainment is proposed, soundproof glass windows and a double-door vestibule shall be required, and windows and doors must remain closed after 2:00 a.m. Notwithstanding, certain exceptions to this requirement, based upon extenuating circumstances, will be identified. This requirement shall not apply to entertainment establishments located entirely within hotels, with no direct entrance from the street.
4. Application requirements, including a sworn affidavit, signed by the applicant, acknowledging and agreeing to comply with all applicable provisions of the City Code, pertaining to extended hours requirements, have been developed. Additionally, a security plan, crowd control plan, floor plan showing all security cameras and a minimum number of security personnel or off-duty police officers that must be on premises during extended hours will be required.
5. A detailed record of compliance, pertaining to the preceding one-year period, and ensuring that there have been no violations of applicable laws and regulations, will be required.
6. All applications for extended hours will be subject to approval and renewal annually, by the City Manager or designee.
7. As a condition of applying for an extended hours approval, the applicant shall agree to provide access to areas of a property subject to extended hours approval (not including private residences or hotel rooms) for inspection by the City (including the City's Police, Code Compliance, Building, and Fire Departments) to ensure compliance with all applicable regulations. Any refusal to provide access under this paragraph will be deemed a violation of this subsection 6-3(a)(3)(E).
8. Separate, enhanced penalties and fines for violations of any applicable provisions relating to extended hours are included.
9. Provisions for a responsible vendor qualification are proposed.

The application and operational requirements included in the draft version of the Ordinance provide a framework for effectively administering an extended hours process. More importantly, they provide tangible and measurable criteria to address public safety. Notwithstanding the work done to date on this application, performance and operations criteria, both the Administration and the City Attorneys office believe that additional fine-tuning may be needed between First and Second Reading.

SUMMARY

The Administration and the City Attorney's office have developed the application and operational criteria in consultation with outside counsel. While this draft criteria is measurable and defensible, additional study and analysis, as well as input from stakeholders, would be beneficial. More importantly, a detailed fiscal impact analysis will need to be completed once a framework for these criteria have been approved by the City Commission. It is anticipated that the administration of this process will likely require additional staffing.

In order to ensure that the criteria applicable for all extended hours establishments has been well vetted, it is recommended that the City Commission discuss the proposed criteria, provide appropriate policy direction, and continue the proposed Ordinance to a future date.

CONCLUSION

In view of the foregoing, the Administration recommends that the City Commission discuss the proposed Ordinance and reach consensus on applicable geographic boundaries, prior to approving any version of the legislation.

ATH/ETC/TRM